



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 02 2008

REPLY TO THE ATTENTION OF:

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richmond L. Williams
Chief Counsel
Hercules Incorporated
Hercules Plaza
1313 North Market Street
Wilmington, DE 19894-0001

Dear Mr. Williams:

Enclosed are a file stamped Consent Agreement and Final Order (CAFO) which resolves Hercules Incorporated in Milwaukee, Wisconsin. CAA Docket No. CAA-05-2008-0024. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUL 02 2008.

Pursuant to paragraph 31 of the CAFO, Hercules Incorporated must pay the \$22,500 civil penalty within 30 days of the date the CAFO was filed, JUL 02 2008. The check must display the case docket number, CAA-05-2008-0024, and the billing document number, 2750803A022.

Please direct any questions regarding this case to Kathleen Schnieders, Associate Regional Counsel, (312) 353-8912.

Sincerely yours,

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: William Baumann
Chief-Compliance and Enforcement Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

Hercules Incorporated
Milwaukee, Wisconsin

Respondent

) Docket No. **CAA-05-2008-0024**
)
) Proceeding to Assess a Civil Penalty under
) § 113(d) of the Clean Air Act, 42 U.S.C.
) § 7413(d)
)
)

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced under § 113(d) of the Clean Air Act (the Act), 42 U.S.C. 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2004).
2. Complainant is the Director of the Air and Radiation Division, U. S. Environmental Protection Agency, Region 5.
3. Respondent is Hercules Incorporated, a corporation doing business in Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2004).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Hercules admits the jurisdictional allegations in this CAFO, and neither admits nor denies the factual allegations in this CAFO.
8. Hercules waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

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JUL 11 2008

Statutory and Regulatory Background

9. Pursuant to Section 111 of the Act, 42 U.S.C. § 7411, on March 8, 1995, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production Requirements (MACT Subpart W) at 40 C.F.R. Part 63, Subpart W, §§ 63.520 – 63.529.
10. MACT Subpart W applies to all existing, new, and reconstructed manufacturers of wet strength resins that are located at a major source.
11. Pursuant to 40 C.F.R. § 60.524(a) the owner or operator of an existing wet strength resin source can either limit total hazardous air pollutant emissions or can comply with MACT Subpart H to control emissions from equipment leaks.
12. MACT Subpart H is also known as National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, 40 C.F.R. §§ 63.160 – 63.183.
13. MACT Subpart H requires that owners and operators repair a valve in a gas/vapor or light liquid service as soon as practicable, but no later than within 15 days of when the leak is first detected. 40 C.F.R. § 63.163(c)(1).
14. MACT Subpart H also requires that any open-ended valve or line be equipped with a cap, blind flange, plug, or second valve. Further, the cap, blind flange, plug, or second valve must seal the end at all times except during operations requiring process fluid flow through the open-ended valve or line. 40 C.F.R. §§ 63.167(a)(1) and (2).
15. MACT Subpart H also requires that each piece of equipment in a process unit to which Subpart W applies to be identified such that it can be distinguished readily from equipment that is not subject to Subpart H. 40 C.F.R. § 63.162(c).
16. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever the Administrator finds, among other things, that any person has violated or is in violation of a requirement or prohibition of Title V of the Act, or any rule promulgated, issued or approved under Title V of the Act.
17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation of the Act up to a total of \$220,000 for violations that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

18. Section 113(d)(1) of the Act limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

20. Hercules owns and operates a facility located at 5228 North Hopkins Street, Milwaukee, Wisconsin.
21. Hercules is subject to MACT Subpart W pertaining to leak detection and repair.
22. Hercules is also subject to its Federally Enforceable State Operating Permit (FESOP), issued by the Wisconsin Department of Natural Resources on August 17, 2005.
23. Hercules has opted to comply with MACT Subpart W by complying with the substantive provisions of MACT Subpart H, as permitted by 40 C.F.R. § 60.524(a).
24. EPA inspected the Facility on July 9–12, 2007, in order to determine compliance with certain provisions of the Act as well as its FESOP.
25. EPA's inspection revealed violations of the Facility's FESOP and MACT Subpart W. Specifically, the Facility violated its FESOP and MACT Subpart W by having one open-ended line, improperly tagging components subject to MACT Subpart W, and not making a final repair within 15 days on one component.
26. On August 13, 2007, EPA issued a Finding of Violation (FOV) to Hercules for violating its FESOP and MACT Subpart W.
27. On September 19, 2007, EPA met with Hercules in a Section 113 Conference to discuss the violations alleged in the FOV and any actions the company had taken to come into compliance.
28. At the time of the 113 Conference, Hercules had already repaired the open-ended line, re-tagged all of its components and had addressed the issue of missing the 15 day deadline for final repairs on leaks. Hercules had also improved its leak management system by incorporating new leak repair logs and modified its maintenance logs to include a notification if the repair has an effect on MACT Subpart W requirements.

Violations

29. Hercules' one open-ended line, improper tagging of components subject to MACT Subpart W, and failure to make a final repair within 15 days on one component are violations of MACT Subpart H, and are consequently violations of MACT Subpart W as well as Hercules' FESOP.
30. These violations constitute violations of Section 111(e) of the Act, 42 U.S.C. § 7411(e), and the regulations set forth at 40 C.F.R. § 60.734(d).

Civil Penalty

31. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and information that Hercules has submitted, EPA has determined that an appropriate civil penalty to settle this action is \$ 22,500.
32. Hercules must pay the \$ 22,500 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America" within 30 days after the effective date of this CAFO to the following address:

US checks sent by regular US Postal Service mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

US checks in US dollar sent by Fed Ex and other non-US-Postal-Service express mail:

U.S. Bank
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

33. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Kathleen K. Schnieders, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

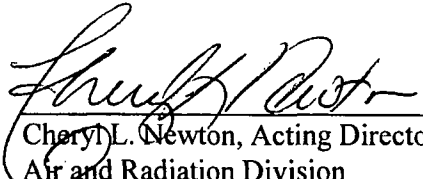
34. This civil penalty is not deductible for federal tax purposes.
35. If Hercules does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
36. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Hercules will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Hercules will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Final Statement

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.
38. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
39. This CAFO does not affect Hercules' responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 37 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.
40. Hercules certifies that it is complying fully with the applicable requirements of MACT Subpart W.
41. This CAFO constitutes an "enforcement response" as that term is used in "EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Hercules' "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).
42. The terms of this CAFO bind Hercules, and its successors, and assigns.
43. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.
44. Each party agrees to bear its own costs and attorneys' fees in this action.
45. This CAFO constitutes the entire agreement between the parties.

U.S. Environmental Protection Agency, Complainant

7/1/08
Date


Cheryl L. Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER

Hercules Incorporated

Docket No. CAA-05-2008-0024

Hercules Incorporated, Respondent

6/24/08

Date

RS Bolton

Rodney S. Bolton

Regional Manager

CONSENT AGREEMENT AND FINAL ORDER

Hercules Incorporated

Docket No. CAA-05-2008-0024

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

7/2/08
Date

Walter W. Kovalick Jr.
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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Docket No: **CAA-05-2008-0024**

CERTIFICATE OF FILING AND MAILING

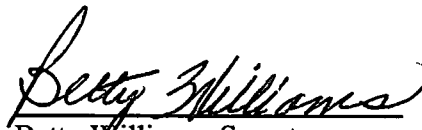
I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Final Order (CAFO), was sent to Hercules Incorporated was filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and that a second original of the CAFO was sent Certified Mail, Return Receipt Requested, to:

Richmond L. Williams
Chief Counsel
Hercules Incorporated
Hercules Plaza
1313 North Market Street
Wilmington, DE 19894-0001

I also certify that a copy of the CAFO was sent by First Class Mail to:

William Baumann, Chief-Compliance and Enforcement Section
Bureau of Air Management
Wisconsin Department of Natural Resources
101 S. Webster St.
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53707

on the 2nd Day of July 2008


Betty Williams, Secretary
AECAS IL/IN

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0186 1238

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